

Commodity Futures Trading Commission

§ 1.47

such offsetting transaction that, in accordance with such specific instructions, is not applied to the oldest portion of the previously held position, the futures commission merchant shall clearly show on the statement issued to the customer or option customer in connection with the transaction, that because of the specific instructions given by or on behalf of the customer or option customer the transaction was not applied in the usual manner, *i.e.*, against the oldest portion of the previously held position. However, no such showing need be made if the futures commission merchant has received such specific instructions in writing from the customer or option customer for whom such account is carried.

(c) *In-and-out trades; day trades.* Notwithstanding the provisions of paragraphs (a) and (b) of this section shall not be deemed to require the application of purchases or sales closed out during the same day (commonly known as “in-and-out trades” or “day trades”) against short or long positions carried forward from a prior date.

(d) *Exceptions.* The provisions of this section shall not apply to:

(1) Purchases or sales of commodity options constituting “bona fide hedging transactions” pursuant to rules of the contract market which have been adopted in accordance with the requirements of § 1.61(b) and approved by the Commission pursuant to; section 5a(a)(12)(A) of the Act *Provided*, That no contract market or futures commission merchant shall permit such option positions to be offset other than by open and competitive execution in the trading pit or ring provided by the contract market, during the regular hours prescribed by the contract market for trading in such commodity option.

(2) Purchases or sales constituting “bona fide hedging transactions” as defined in § 1.3(z); nor

(3) Sales during a delivery period for the purpose of making delivery during such delivery period if such sales are accompanied by instructions to make delivery thereon, together with warehouse receipts or other documents necessary to effectuate such delivery.

(4)–(7) [Reserved]

(8) Purchases or sales held in error accounts, including but not limited to

floor broker error accounts, and purchases or sales identified as errors at the time they are assigned to an account that contains other purchases or sales not identified as errors and held in that account (“error trades”), provided that:

(i) Each error trade does not offset another error trade held in the same account;

(ii) Each error trade is offset by open and competitive means on or subject to the rules of a contract market by not later than the close of business on the business day following the day the error trade is discovered and assigned to an error account or identified as an error trade, unless at the close of business on the business day following the discovery of the error trade, the relevant market has reached a daily price fluctuation limit and the trader is unable to offset the error trade, in which case the error trade must be offset as soon as practicable thereafter; and

(iii) No error trade is closed out by transferring such an open position to another account also controlled by that same trader.

(e) The statements required by paragraph (a) of this section may be furnished to the customer or the person described in § 1.33(d) by means of electronic transmission, in accordance with § 1.33(g).

(Approved by the Office of Management and Budget under control number 3038-0007)

(Secs. 4g, 5, 42 Stat. 1000, 49 Stat. 1496; 7 U.S.C. 6g, 7; secs. 4g, 5, 8a; 7 U.S.C. 6g, 7, 12a)

[41 FR 3194, Jan. 21, 1976, as amended at 46 FR 54524, Nov. 3, 1981; 46 FR 63035, Dec. 30, 1981; 47 FR 57009, Dec. 22, 1982; 48 FR 35289, Aug. 3, 1983; 49 FR 19972, May 11, 1984; 50 FR 26, Jan. 2, 1985; 51 FR 17473, May 13, 1986; 53 FR 614, Jan. 11, 1988; 56 FR 14314, Apr. 9, 1991; 57 FR 55085, Nov. 24, 1992; 59 FR 5526, Feb. 7, 1994; 66 FR 53517, Oct. 23, 2001]

§ 1.47 Requirements for classification of purchases or sales of contracts for future delivery as bona fide hedging under § 1.3(z)(3) of the regulations.

(a) Any person who wishes to avail himself of the provisions of § 1.3(z)(3) of the regulations and to make purchases or sales of any commodity for future delivery in any commodity in excess of

trading and position limits then in effect pursuant to section 4a of the Act shall file statement with the Commission in conformity with the requirements of this section. All or a specified portion of the transactions and positions described in these statements shall not be considered as bona fide hedging if such person is so notified by the Commission:

(1) Within 30 days after the Commission is furnished the information required under paragraph (b) of this section, or

(2) Within 10 days after the Commission is furnished with the information required under paragraph (c) of this section.

The Commission may request the person notified to file specific additional information with the Commission to support a determination that all, or the specified portion, of the transactions and positions be considered as bona fide hedging transactions and positions. In such cases, the Commission shall consider all information so filed and, by notice to such person, shall specify the extent to which the Commission has determined that the transactions and positions may be classified as bona fide hedging. In no case shall transactions and positions described be considered as bona fide hedging if they exceed the levels specified in paragraph (d) of this section.

(b) *Initial statement.* Initial statements concerning the classification of transactions and positions as bona fide hedging pursuant to §1.3(z)(3) shall be filed with the Commission at least 30 days in advance of the date that such transactions or positions would be in excess of limits then in effect pursuant to section 4a of the Act. Such statements shall:

(1) Describe the transactions and positions for future delivery and the offsetting cash positions;

(2) Set forth in detail information which will demonstrate that the purchases and sales are economically appropriate to the reduction of risk exposure attendant to the conduct and management of a commercial enterprise;

(3) Contain, and upon request of the Commission be supplemented by, such other information which is necessary

to enable the Commission to make a determination whether the particular purchases and sales for future delivery fall within the scope of those described in section 1.3(z)(1) of the regulations;

(4) Include a statement concerning the maximum size of positions for future delivery (both long and short) which will be acquired any time during the next fiscal year or marketing season of the person filing or on whose behalf the filing is made.

(5) In addition: statements filed by an agent, concerning a futures position which would offset a cash position which the agent does not own or has not contracted to buy or sell, shall contain information describing all contractual arrangements between the agent filing and the person who owns the commodity or holds the cash market commitment being offset;

(6) Statements concerning futures positions to be acquired against unsold anticipated production or unfilled anticipated requirements for manufacturing, processing or feeding shall also include the information required under §1.48 of the regulations.

(c) *Supplemental reports.* Whenever the purchases or sales which a person wishes to classify as bona fide hedging shall exceed the amount provided in the person's most recent filing pursuant to this section or the amount previously specified by the Commission pursuant to paragraph (a) of this section, such person shall file with the Commission a statement which updates the information provided in the person's most recent filing and provides the reasons for this change at least ten days in advance of the date that person wishes to exceed those amounts.

(d) *Maximum purchases and sales.* Purchases and sales for future delivery considered bona fide hedging pursuant to §1.3(z)(3) of the regulations shall at no time exceed the lesser of:

(1) The value fluctuation equivalent (in terms of the commodity for future delivery) of the current cash position described in the information most recently filed pursuant to this section, or

(2) The maximum level of long or short open positions provided in the information most recently filed pursuant

to this section or most recently specified by the Commission pursuant to paragraph (a) of this section.

(e) *Updated reports.* Reports updating the information required pursuant to this section also shall be filed with the Commission upon specific request.

(Approved by the Office of Management and Budget under control number 3038-0013)

[42 FR 42751, Aug. 8, 1977, as amended at 46 FR 63035, Dec. 30, 1981]

§ 1.48 Requirements for classification of sales or purchases for future delivery as bona fide hedging of unsold anticipated production or unfilled anticipated requirements under § 1.3(z)(2) (i)(B) or (ii)(C) of the regulations.

(a) Any person who wishes to avail himself of the provisions of § 1.3(z)(2) (i)(B) or (ii)(C) of the regulations and to make sales or purchases for future delivery in any commodity in excess of trading and position limits then in effect pursuant to section 4a of the Act for the purposes of bona fide hedging shall file statements with the Commission in conformity with the requirements of this section. All or a specified portion of the unsold anticipated production or unfilled anticipated requirements described in these statements shall not be considered as offsetting positions for bona fide hedging transactions and positions if such person is so notified by the Commission within ten days after the Commission is furnished with the information required under paragraphs (b) or (c) of this section. The Commission may request the person notified to file specific additional information with the Commission to support a determination that the statement filed accurately reflects unsold anticipated production or unfilled anticipated requirements for manufacturing, processing or feeding. In such cases, the Commission shall consider all additional information so filed and, by notice to such person, shall specify its determination as to what portion of the production or requirements described constitutes unsold anticipated production or unfilled anticipated requirements for the purposes of bona fide hedging. In no case shall such transactions and positions which offset unsold anticipated

production or unfilled anticipated requirements be considered bona fide hedging if they exceed the levels specified in paragraph (d) of this section of the regulations.

(b) *Initial statement.* Initial statements concerning the classification of transactions and positions as bona fide hedging pursuant to § 1.3(z)(2) (i)(B) or (ii)(C) shall be filed with the Commission at least ten days in advance of the date that such transactions or positions would be in excess of limits then in effect pursuant to section 4a of the Act. Such statements shall set forth in detail for a specified operating period not in excess of one year the person's unsold anticipated production or unfilled anticipated requirements for processing or manufacturing or feeding and explain the method of determination thereof, including, but not limited to, the following information:

(1) For unsold anticipated production:

(i) Annual production of such commodity for the three complete fiscal years preceding the current fiscal year;

(ii) Anticipated production of such commodity for a specified period not in excess of one year;

(iii) Fixed-price forward sales of such commodity;

(iv) Unsold anticipated production of such commodity for a specified period not in excess of one year.

(2) For unfilled anticipated requirements:

(i) Annual requirements of such commodity for processing or manufacturing or feeding for the three complete fiscal years preceding the current fiscal year;

(ii) Anticipated requirements of such commodity for processing or manufacturing or feeding for a specified operating period not in excess of one year;

(iii) Inventory and fixed-price forward purchases of such commodity, including any quantity in process of manufacture and finished goods and byproducts of manufacture or processing (in terms of such commodity);

(iv) Unfilled anticipated requirements of such commodity for processing or manufacturing or feedings for a specified operating period not in excess of one year.